IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.95 OF 2003

Fr. Antonio M. Gomes
r/o. Rachol, Salcete, Goa. ..... Appellant.

V/s.

1. Director of Education,
Directorate of Education,
Government of Goa, Panaji.

2. The Assistant Director of Education
South Education Zone, Margao, Goa.

3. State of Goa, represented by
Chief Secretary,
Government of Goa, Panaji, Goa.

4. Diocesan Society of Education,
represented by its Secretary,
Paco Patriarchal,
Altinho, Panaji, Goa. ..... Respondents.

Mr. P.S. Rao, Advocate for the appellant.

Mr. Shaik Vahidulla, Addl. Govt. Advocate for the respondents No.1 to 3.

Mr. V. Braganza, Advocate for respondent No.4.

CORAM : P.V. KAKADE, J.

DATE : 6th December, 2006.

ORAL JUDGMENT :

Heard learned Counsel for the parties. Perused the record. The appellant-teacher has preferred this appeal against the Judgment and Order passed by the Addl. District Judge, Margao who allowed the respondent's appeal and dismissed the suit by order dated 29.5.1998 in Regular Civil Suit No.180/91/A.

2. The appellant-plaintiff filed the suit for recovery of salary and arrears. It was his case that he had been working as Headmaster in the schools run by the defendant No.4 which were aided by the State Government. He was appointed as Headmaster on 8.6.70 in the pay scale of Rs.425-25-500-30-680. Under the Circular dated 10.3.1971, the pay scales were revised to Rs.400-30-640-EB-40-800. After the new scales came, the case of the plaintiff is that, the pay scales as fixed prior to the said revision were protected and as such, the plaintiff's basic pay was at Rs. 425/- per month till 8.6.71 and Rs.455/- per month till 8.6.72 and so on. But, while implementing the third pay commission in the year 1978, the Accounts Section of the Director of Education wrongly considered his basic pay as Rs.400/- per month from 8.6.70 and Rs.430/- per month from 8.6.71 and so on and consequently, his dues for salary arrears were to the tune of Rs.19,870/-. The plaintiff submitted that he retired as Headmaster in April, 1992 and prior to his retirement, he had filed the present suit

praying for declaration that he was entitled for protection of his basic pay at the time of his appointment i.e. Rs. 425/- as on 8.6.70 with increment of Rs.30/- from 8.6.71. He also prayed for the direction to the defendants to pay arrears of Rs.19,870/- with interest at the rate of 18 % per annum and also for direction to make future payment of his salary considering that his basic pay on 8.6.70 was Rs.425/-.

The defendants No.1, 2 and 3 contested the suit contending that as the plaintiff had been appointed on 8.6.70 and the scales had been revised with effect from 27.5.70, the plaintiff was entitled to the revised scales and his basic pay as on 8.6.70 was to be considered as Rs.400/- and not Rs.425/-. They further contended that the Circulars issued on 10.3.71 and 13.4.71 had clarified the position and the plaintiff was not entitled for any arrears. The defendant No.4 by its separate written statement also denied the claim of the plaintiff.

3. The trial Court, on the basis of the available evidence, came to the conclusion that the plaintiff had proved that his basic salary on 8.6.71 was Rs.425/- and on 8.6.72 was Rs.455/- and as such, the suit came to be decreed. In the appeal carried to the District Court, the learned Addl. District Judge did not concur with the findings recorded by the trial Court and came to the conclusion that the basic salary of the plaintiff was required

to be considered at Rs.400/- from 8.6.70 and not Rs. 425/- and, as such, he was not entitled to any protection by virtue of the Circulars and dismissed the suit, allowing the appeal. Hence, the present appeal.

4. The only question for my consideration is whether the impugned circulars are properly interpreted by the concerned authority or not, for which purpose, we must refer to the circular dated 10.3.1971 which governs the dispute. Clause 9 of the said circular issued by the respondent-State stipulates thus :

> "As regards the Headmasters with Post Graduate qualifications, it is stated that the pay scale of Rs.425-680 remains unrevised till 27/5/1979. From this date, their pay scale is merged in the pay scale of Rs.400-800 and as such their basic pay should be fixed in the said pay scale by protecting the actual salary drawn and fixing it at the next higher stage as explained in other cases above."

Now, if this rule is applicable, it appears to be wrongly interpreted by the respondent-State. It is obvious that the original pay scale of Rs.425-680 given to the plaintiff though merged in the pay scale of Rs.400-800, the basic pay to be fixed, was by protecting the actual salary drawn and fixing it at the next higher stage which is also explained in the said Circular

Exhibit-18. That means, the basic pay that was protected was Rs.425/- as on 8.6.1970 and the next higher stage was Rs. 430/- as on 8/6/1970 in the revised pay scale of Rs. 400-800 by protecting the actual salary of Rs. 425/- drawn by the plaintiff as on 8/6/1970. The instructions of the circular dated 10.3.1971 appears to have been further clarified by Circular No. 16 dated 13.4.1971. The relevant clause (1) of the said Circular reads thus :

> "The fixation of the pay in the new scales is to be done by taking into consideration the salary drawn by the teacher on 21.12.67 and 27.5.1970. However, if he is appointed after these dates, the protection of pay drawn by him is required to be given. Thus an untrained teacher, appointed on a salary of Rs.150/- before 21.12.1967 will have his fixed at the rate of Rs.150/- on 21.12.67 with the date of his increment on the next date of his appointment. However, if an untrained teacher is appointed after 21.12.67 say on 7.5.68 on Rs.150/- basic, his pay in the new scale on that date shall be fixed at Rs.150/- only, with the date of increment after the completion of one year. The fixing of salary in this way will have to be done for all the categories of teachers appointed prior to the issue of the circular."

This would mean that though the plaintiff was appointed after 27.5.1970, the protection of pay of Rs.420/- drawn by me is required to be given without any ambiguity.

5. On perusal of the Judgment of the lower appellate Court, it appears that he was of the view that Clause 9 of the earlier Circular was the protection given to the teachers who were in service prior to 27.5.1970, but for those appointed after 27.5.70, only the protection of pay drawn by them was required to be given and not the protection of the basic pay. In my considered view, this approach appears to be wrong and, therefore, cannot be accepted.

6. The learned Addl. Government Advocate sought to put reliance on the Fundamental Rule 22. Clause (9) thereof was cited in order to show that the appellant was granted personal pay of Rs.25/- which brought him in the category of the Headmaster getting basic pay of Rs.425/- prior to application of the third pay commission. However, this argument cannot be accepted because the State in its written statement has categorically admitted that Rs.425/- was the basic pay of the appellant and the basic pay drawn by him was protected and the same was in conformity with the provisions of Fundamental Rule 23 under the Government of India's Orders 5 and 6. Moreover, even if we take into account Rule 22, Clause (9), it is clear therefrom that if there is no such stage in the earlier scales, the stage next below that pay plus personal pay equal to the difference, should be granted. Therefore, even if this rule is

made applicable, still there is no doubt that the appellant would be entitled to pay of Rs.425/- and not Rs.400/-, as prayed for.

7. For the reasons recorded above, I hold that the learned lower appellant Court Judge has wrongly interpreted the relevant rules and the circulars and, therefore, I have no option but to allow the appeal by quashing and setting aside the order passed by the lower appellant Court and restoring the order passed by the trial Court in this regard.

8. In the result, the appeal is, hereby, allowed in terms of prayer clauses (b) and (c). Under the circumstances, there shall be no order as to costs.

P.V. KAKADE, J.

ssm.